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California thwarts plans to restrict chiropractic

Bill would have prohibited treatment of infectious, communicable diseases

by Dr Brian A. Smith, D.C., Chiropractic Practice Rights Coalition of California

When the California State Assembly threatened to submit a bill that may have had a devastating effect on the chiropractic scope of practice, the Board of Chiropractic Examiners (BCE) and the California Chiropractic Association (CCA) went into action.

What followed was almost a year of heroic efforts to finally defeat one of the most draconian measures to ever affect the Chiropractic Initiative Act since its ratification by voters in 1922.

The Assembly bill being considered had three sections.

First: Doctors of Chiropractic could not claim that chiropractic adjustive therapy was a substitute for vaccination;

Second: Doctors of Chiropractic could not treat communicable diseases as defined by California Codes; and,

Third: Doctors of Chiropractic could not treat infectious disease.

The CCA, under the direction of its president, Dr. Brad Sullivan, and executive director Garret Cuneo, hoped to head off legislative involvement by proposing regulations which would accomplish the same goals but prevent what it believed would be a damaging public vote on the issue.

At the June 5, 1993, BCE meeting, several people presented testimony relating to the issue at hand. The BCE voted to adopt emergency regulations regarding vaccination and communicable diseases while delaying action on infectious diseases until the next meeting.

However, after members of the public had left, Cuneo returned and tried to force adoption of the regulation. He argued that treating infectious diseases would best be addressed as a professional conduct issue rather than a scope of practice issue, "where any D.A. could be in the position to determine when a chiropractor has exceeded chiropractic scope of practice; but unprofessional conduct would be decided by the Board."

(His arguments were later discredited when the Los Angeles County District Attorney's Office revealed that both unprofessional conduct and scope of practice issues could be prosecuted as the illegal practice of medicine under existing California Codes, subject to misdemeanor penalties of \$1,000.00 and up to one year in jail. The defendant in such a case would also be subject to disciplinary

action by both the BCE and the Board of Medical Quality Assurance with a revocation of license for a minimum of two years.)

The BCE discussed the matter until Vivian Davis, BCE Executive Director reminded them that it was improper procedure to bring up a matter already decided earlier. A motion to adopt the regulation and a second were offered then rescinded after a rancorous debate among members of the BCE.

Before the next BBC meeting, held July 29, 1993, two vacant seats on the Board were filled. One member had been appointed after the June meeting and a public member was nominated the night before the meeting. By this time, several hundreds of pages of testimony had been submitted to the BCE regarding the regulations.

It was widely questioned how the new board members, especially the one not who was not a Doctor of Chiropractic, could become familiar enough with the issues and read all of the submitted testimony and to be able to cast an informed ballot in the space of a few hours while acting on all other BCE items of that meeting. John Bovee, the last-minute appointee, cast the deciding vote for the adoption of the infectious disease regulation.

On July 29, 1993, despite rising opposition to the regulations, the BCE voted 4-3 to adopt the proposed regulation to prevent treatment of infectious diseases by licensed Doctors of Chiropractic as 317(y), later 317(x). In September, the BCE redesignated the regulation as 317(x) which prolonged the time period for adoption.

During September to October, a group of D.C.s formed the Chiropractic Practice Rights Coalition of California. The Coalition's sole goal was to prevent the adoption of these regulations or to challenge them in Superior Court if they were adopted.

The Coalition argued that:

*** There was no "public health emergency" that made this regulation necessary;

*** Some BCE members held positions with the CCA, a possible conflict of interest since they might feel obligated to uphold the CCA position;

*** The regulations were vague and subject to many interpretations;

*** The regulations were inconsistent with the Chiropractic Act which states a licensed D.C. may diagnose and treat any injury or illness in any patient; and

*** As established by California case law, the BCE was acting beyond its authority by attempting to alter the scope of practice through unprofessional conduct regulations.

For the December 9, 1993, BCE meeting, doctors from around the State closed their offices and flew to Sacramento to testify. Members of the Coalition submitted written and oral testimony opposing the adoption of these regulations based on the above arguments.

As a result, the BCE requested an opinion from the California Fair Political Practices Commission (FPPC) regarding possible conflict-of-interest problems with one Board member. The FPPC's opinion found no conflict of interest existed as the CCA would not gain monetarily from the actions of its members on the BCE.

The Board then tabled the vote on the proposal until the January 6, 1994. Since California has a 120-day time limit to convert an emergency regulation into a permanent one, the January meeting would be the last opportunity to do so.

After the issue was tabled and the concerned members of the profession left, CCA's Dr. Sullivan and Mr. Cuneo returned. By one account, which appears to be corroborated by the minutes of the meeting, they tried to force the BCE to vote on the regulation, which the BCE's legal counsel resisted. By a second account, the CCA merely questioned what happened earlier and left after being informed about the Board's decision.

On January 6, 1994, the BCE voted to adopt the infectious disease regulation and forwarded the matter to the Office of Administrative Law (OAL) for review. The testimony submitted by the BCE did not pass the OAL's requirements and it was rejected on March 9, 1994, primarily on the legal grounds raised by the Coalition.

The OAL noted that the BCE had not answered the public's testimony, the regulation was inconsistent with existing laws, the wording was unclear, and the Board had not proved the necessity of such regulations.

As a direct consequence of the Coalition's actions, the proposed regulations were defeated, and by this time, the threat of Assembly action had passed -- the proposed bill would have had to be introduced for a full vote by February 24, 1994.

The ramifications of this episode in California can be felt far past the state's borders. Other states already have prohibitions against the treatment of infectious diseases by doctors of chiropractic. It is important for each state chiropractic regulatory agency to eliminate such restrictions. In those cases where D.C.s feel the state's board or professional organization is either improperly or ineffectively combatting such restrictions, they may need to mobilize for direct action.

The profession has come under attack in recent months in several states including New York and New Jersey as well as in print and on television. Dr. Sid Williams, D.C. recently stated, "I believe their (medical and pharmaceutical interests) next step will be to go from state to state with similar laws of exclusion for various classes of patients and preventing the chiropractic profession from benefitting from any federal healthcare program that might be forthcoming." (*The Chiropractic Journal*, January 1994).

We need to heed those warnings if we are to avoid becoming back and neck technicians.

(Dr. Brian A. Smith is a member of the Chiropractic Practice Rights Coalition of California and continues to monitor legislative attempts to restrict chiropractic rights in his state and throughout the country. He asks doctors to alert him to proposals in their states which would jeopardize D.C.s rights to treat any specified class of patient or category of health care problem. He may be reached at 3685 Motor Avenue, Suite 250, Los Angeles, CA 90034)

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